

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

DAYLAN LYDELL PLOUSHA,  
Plaintiff,  
v.  
ARDEN PARK APARTMENTS,  
Defendant.

Case No. 2:25-cv-00262-TLN-CSK  
FINDINGS AND RECOMMENDATIONS  
(ECF Nos. 1, 2)

Plaintiff Daylan Lydell Plousha is representing himself in this action and seeks leave to proceed in forma pauperis (“IFP”) pursuant to 28 U.S.C. § 1915.<sup>1</sup> (ECF No. 2.) For the reasons that follow, the Court recommends Plaintiff’s IFP application be denied, and the Complaint be dismissed without leave to amend.

**I. MOTION TO PROCEED IN FORMA PAUPERIS**

28 U.S.C. § 1915(a) provides that the court may authorize the commencement, prosecution or defense of any suit without prepayment of fees or security “by a person who submits an affidavit stating the person is “unable to pay such fees or give security therefor.” This affidavit is to include, among other things, a statement of all assets the person possesses. *Id.* The IFP statute does not itself define what constitutes insufficient

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<sup>1</sup> This matter proceeds before the undersigned pursuant to 28 U.S.C. § 636, Fed. R. Civ. P. 72, and Local Rule 302(c).

1 assets. See *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th Cir. 2015). In *Escobedo*,  
2 the Ninth Circuit stated that an affidavit in support of an IFP application is sufficient  
3 where it alleges that the affiant cannot pay court costs and still afford the necessities of  
4 life. *Id.* “One need not be absolutely destitute to obtain benefits of the in forma pauperis  
5 statute.” *Id.* Nonetheless, a party seeking IFP status must allege poverty “with some  
6 particularity, definiteness and certainty.” *Id.* According to the United States Department  
7 of Health and Human Services, the current poverty guideline for a household of one (not  
8 residing in Alaska or Hawaii) is \$15,060.00. See U.S. Dpt. Health & Human Service  
9 (available at <https://aspe.hhs.gov/poverty-guidelines>).

10 Here, Plaintiff has made the required showing under 28 U.S.C. § 1915(a). (ECF  
11 No. 2.) However, the Court will recommend Plaintiff’s IFP application be denied because  
12 the action is facially frivolous and without merit because it fails to state a claim and lacks  
13 subject matter jurisdiction. “A district court may deny leave to proceed in forma pauperis  
14 at the outset if it appears from the face of the proposed complaint that the action is  
15 frivolous or without merit.” *Minetti v. Port of Seattle*, 152 F.3d 1113, 1115 (9th Cir. 1998)  
16 (quoting *Tripati v. First Nat. Bank & Tr.*, 821 F.2d 1368, 1370 (9th Cir. 1987)); *see also*  
17 *McGee v. Dep’t of Child Support Servs.*, 584 Fed. App’x. 638 (9th Cir. 2014) (“the district  
18 court did not abuse its discretion by denying McGee’s request to proceed IFP because it  
19 appears from the face of the amended complaint that McGee’s action is frivolous or  
20 without merit”); *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir. 1965) (“It is the duty of the  
21 District Court to examine any application for leave to proceed in forma pauperis to  
22 determine whether the proposed proceeding has merit and if it appears that the  
23 proceeding is without merit, the court is bound to deny a motion seeking leave to  
24 proceed in forma pauperis.”). Because it appears from the face of the Complaint that this  
25 action is frivolous and is without merit as discussed in more detail below, the Court  
26 recommends denying Plaintiff’s IFP motion.

27 **II. SCREENING REQUIREMENT**

28 Pursuant to 28 U.S.C. § 1915(e), the court must screen every in forma pauperis

1 proceeding, and must order dismissal of the case if it is “frivolous or malicious,” “fails to  
2 state a claim on which relief may be granted,” or “seeks monetary relief against a  
3 defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B); *Lopez v. Smith*,  
4 203 F.3d 1122, 1126-27 (2000) (en banc). A claim is legally frivolous when it lacks an  
5 arguable basis either in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). In  
6 reviewing a complaint under this standard, the court accepts as true the factual  
7 allegations contained in the complaint, unless they are clearly baseless or fanciful, and  
8 construes those allegations in the light most favorable to the plaintiff. See *Neitzke*, 490  
9 U.S. at 327; *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960  
10 (9th Cir. 2010), cert. denied, 564 U.S. 1037 (2011).

11 Pleadings by self-represented litigants are liberally construed. *Hebbe v. Pliler*, 627  
12 F.3d 338, 342 & n.7 (9th Cir. 2010) (liberal construction appropriate even post-*Iqbal*).  
13 However, the court need not accept as true conclusory allegations, unreasonable  
14 inferences, or unwarranted deductions of fact. *Western Mining Council v. Watt*, 643 F.2d  
15 618, 624 (9th Cir. 1981). A formulaic recitation of the elements of a cause of action does  
16 not suffice to state a claim. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007);  
17 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

18 To state a claim on which relief may be granted, the plaintiff must allege enough  
19 facts “to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A  
20 claim has facial plausibility when the plaintiff pleads factual content that allows the court  
21 to draw the reasonable inference that the defendant is liable for the misconduct alleged.”  
22 *Iqbal*, 556 U.S. at 678. A pro se litigant is entitled to notice of the deficiencies in the  
23 complaint and an opportunity to amend unless the complaint’s deficiencies could not be  
24 cured by amendment. See *Lopez*, 203 F.3d at 1130-31; *Cahill v. Liberty Mut. Ins. Co.*, 80  
25 F.3d 336, 339 (9th Cir. 1996).

26 **III. THE COMPLAINT**

27 Plaintiff brings this action against Defendant Aspen Park Apartments. Compl. at 2  
28 (ECF No. 1). Plaintiff states the basis for jurisdiction is federal question based on

1 "discrimination, water damage, [and] kick doe activitys." *Id.* at 4. The entirety of Plaintiff's  
2 allegations are as follow:

3 Somebody had a key and could walk in and out of that place  
4 and its flooded out side of the windows. That will cause low  
temp and my stuff will not charge and I think only one plug  
works there.  
5

6 [...]

7 People ran in and out of my apartment tracking dog poof and  
8 water damage, also they kicked the door more than once with  
no license plate or tags on their vehicle (a sign this people  
have no insurance talk about illegal).

9 Compl. at 5, 7. For relief, Plaintiff seeks \$75,000 and states "I can't go in and out of the  
10 place due to water and dog poof I would have to walk my stuff through in order to move  
11 to a house. Cost more than 1 job." *Id.* at 6; see *id.* at 7.

#### 12 IV. DISCUSSION

##### 13 A. Subject Matter Jurisdiction

14 The Court lacks subject matter jurisdiction over this action. Federal courts are  
15 courts of limited jurisdiction and may hear only those cases authorized by federal law.  
16 *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). Jurisdiction is a threshold  
17 inquiry, and "[f]ederal courts are presumed to lack jurisdiction, 'unless the contrary  
18 appears affirmatively from the record.'" *Casey v. Lewis*, 4 F.3d 1516, 1519 (9th Cir.  
19 1993) (quoting *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 546 (1986)); see  
20 *Morongo Band of Mission Indians v. Cal. State Bd. of Equalization*, 858 F.2d 1376, 1380  
21 (9th Cir. 1988). Without jurisdiction, the district court cannot decide the merits of a case  
22 or order any relief and must dismiss the case. See *Morongo*, 858 F.2d at 1380. A federal  
23 court's jurisdiction may be established in one of two ways: actions arising under federal  
24 law or those between citizens of different states in which the alleged damages exceed  
25 \$75,000. 28 U.S.C. §§ 1331, 1332. "Subject-matter jurisdiction can never be waived or  
26 forfeited," and "courts are obligated to consider *sua sponte*" subject matter jurisdiction  
27 even when not raised by the parties. *Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012).

28 The Complaint fails to establish the Court's subject matter jurisdiction. See

1 Compl. The Complaint states no basis for federal court jurisdiction, and none is  
2 apparent. Although the Complaint indicates the basis for subject matter jurisdiction is  
3 federal question based on “discrimination, water damage, [and] kick doe activitys,” no  
4 federal cause of action is clearly asserted, and no federal claims are suggested by the  
5 facts, to the extent the facts are discernible. See Compl. at 4-7. Though the term  
6 “discrimination” is used once in the federal question jurisdiction section, the Complaint  
7 contains no allegations related to discrimination. See *id.* at 4. The Complaint also fails to  
8 establish diversity jurisdiction. Although Plaintiff satisfies the amount in controversy  
9 requirement by stating he seeks \$75,000 for relief, Plaintiff fails to establish diversity of  
10 citizenship. See Compl. at 4-5. On the face of the Complaint, all parties appear to be  
11 citizens of California. Compl. at 2 (Defendant located in Sacramento, California), 4  
12 (Plaintiff is a California resident), 5 (Defendant’s principal place of business is in  
13 California); *see also Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir.  
14 2001) (“Section 1332 requires complete diversity of citizenship; each of the plaintiffs  
15 must be a citizen of a different state than each of the defendants.”). Because there is no  
16 diversity of citizenship established here, the Court finds that it also lacks subject matter  
17 jurisdiction based on diversity jurisdiction.

18       **B. Federal Rule of Civil Procedure 8**

19 Plaintiff’s Complaint does not contain a short and plain statement of a claim as  
20 required by Federal Rule of Civil Procedure 8. In order to give fair notice of the claims  
21 and the grounds on which they rest, a plaintiff must allege with at least some degree of  
22 particularity overt acts by specific defendants which support the claims. See *Kimes v.*  
23 *Stone*, 84 F.3d 1121, 1129 (9th Cir. 1996). Here, the Complaint does not contain facts  
24 supporting any cognizable legal claim against Defendant. The Complaint consists of a  
25 few vague and conclusory allegations that fail to establish Plaintiff’s causes of action.  
26 While Plaintiff lists “discrimination, water damage, [and] kick doe activitys,” as causes of  
27 action, there is no federal cause of action clearly asserted as stated above. See Compl.  
28 at 4-7. Although the Federal Rules adopt a flexible pleading policy, even a pro se

1 litigant's complaint must give fair notice and state the elements of a claim plainly and  
2 succinctly. *Jones v. Community Redev. Agency*, 733 F.2d 646, 649 (9th Cir. 1984).

3 The Complaint is subject to dismissal. See *McHenry v. Renne*, 84 F.3d 1172,  
4 1178-80 (9th Cir. 1996) (affirming dismissal of complaint where "one cannot determine  
5 from the complaint who is being sued, for what relief, and on what theory, with enough  
6 detail to guide discovery").

7 **C. Leave to Amend**

8 In considering whether leave to amend should be granted, the Court finds that the  
9 Complaint is without merit because it fails to state a claim and lacks subject matter  
10 jurisdiction. See generally Compl. In light of the Complaint's deficiencies and the Court's  
11 lack of subject matter jurisdiction, granting leave to amend would be futile. The  
12 Complaint should therefore be dismissed without leave to amend. See *Lopez*, 203 F.3d  
13 at 1130-31; *Cato v. United States*, 70 F.3d 1103, 1105-06 (9th Cir. 1995).

14 **V. CONCLUSION**

15 Based upon the findings above, it is RECOMMENDED that:

16 1. Plaintiff's motion to proceed in forma pauperis (ECF No. 2) be DENIED;  
17 2. Plaintiff's Complaint (ECF No. 1) be DISMISSED without leave to amend;  
18 and  
19 3. The Clerk of the Court be directed to CLOSE this case.

20 These findings and recommendations are submitted to the United States District  
21 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within  
22 14 days after being served with these findings and recommendations, any party may file  
23 written objections with the Court and serve a copy on all parties. This document should  
24 be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any  
25 reply to the objections shall be served on all parties and filed with the Court within 14  
26 days after service of the objections. Failure to file objections within the specified time  
27 may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449,  
28 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

1 Dated: April 25, 2025  
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CHI SOO KIM  
UNITED STATES MAGISTRATE JUDGE

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